

## **REMARKS**

### **I. Status of the Claims**

Claims 1-22 were initially filed. Claims 11-22 have been withdrawn from consideration as the result of a restriction requirement. Upon entry of the present amendment, claims 1-10 remaining pending, whereas claims 11-22 are canceled. The Examiner has indicated the allowability of claims 5, 6, and 9 except for their dependency from a rejected claim.

### **II. Claim Rejections**

#### **A. 35 U.S.C. §102**

Claims 1-4 and 10 were rejected under 35 U.S.C. §102(a) for alleged anticipation by Reiger *et al.* Applicants respectfully traverse the rejection.

The Examiner stated in the Office Action of February 9, 2004, that the Reiger reference has a §102 effective date of November 5, 1998. In response, Applicants hereby submit a 37 C.F.R. §1.131 declaration by inventors Stefan Ambs and Curtis Harris, along with a redacted copy of a manuscript (Exhibit I) and an Employee Invention Report (Exhibit II) describing the present invention as evidence of possession of claimed invention prior to the effective date of Reiger *et al.* All redacted dates in the Exhibits are well before November 5, 1998.

As established by the inventors' declaration and the attached copy of manuscript, prior to November 5, 1998, the present inventors had already reduced to practice the claimed invention: they discovered that in a NOS-2 inhibitor can inhibit the growth of cells that do not express functional p53 and can therefore be used as a cancer chemotherapeutic agent to treat cancer with p53 mutant (see page 18 and Figure 1c(D) of Exhibit I). The inventors further indicated in the Invention Report that the invention can be used to screen for candidate agents with therapeutic activity using a cell-based assay (see paragraph 8 on page 2 of Exhibit II). Accordingly, Reiger *et al.* is not available as a §102(a) prior art reference and cannot anticipate the pending claims. The withdrawal of the anticipation rejection is respectfully requested.

B. 35 U.S.C. §103

Claim 8 was rejected under 35 U.S.C. §103(a) for alleged obviousness over Reiger *et al.* in light of Applicants' own statement in the present specification on page 17, lines 26-31. Applicants respectfully traverse the rejection.

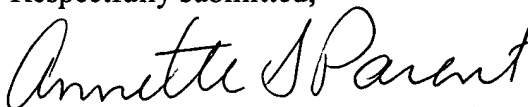
As discussed above, Reiger *et al.* is not available as a §102(a) prior art reference to the present application. Without more, Applicants' own statement regarding cGMP assay by ELISA simply cannot render the claimed invention obvious. The withdrawal of the obviousness rejection is respectfully requested.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,

  
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